

June 13, 2002

**Division/Contact:** Division of Workforce Solutions/ W-2 C&I Contract Issues Subcommittee

**Topic:** Recommendations to DWD for Access to 2002-2003 W-2 Contingency Fund (from Contract Issues Subcommittee of C&I Committee)

**Issue:** Definition of Criteria and Process for Accessing W-2 Contingency Fund

**Background:**

The W-2 Contract and Implementation Committee requested that its Contract Issues subcommittee formulate a process to recommend accessing the W-2 Contingency Fund, to address the issue of funding for W-2 benefits payments. The recommendations should address the criteria for access to funding, any suggestions on the process of approval by DWD and the State, and any issues of timing.

As of the end of February 2002, 25 of 67 W-2 agencies are projected by DWD to have deficits in benefit spending as compared to the contracted benefit allocations. These projected deficits total over \$ 21.4 million. There are multiple causative factors underlying the projected benefit deficits:

- DWD utilized historical caseload data in the benefit allocation process from the time period of approximately March or April 2001. It was known at the time of contract award that the caseloads had risen significantly since the original benefits allocation; however, any underfunding issues were understood by the agencies to be handled during contract implementation.
- The Legislature made further reductions in W-2 funding amounts in order to fully fund anticipated child care needs.
- The economic climate in Wisconsin continued to deteriorate with a corresponding rise in W-2 caseloads in most areas of the state. Several communities have experienced major employer downsizings and closures. Benefits spending shortfalls have already materialized within the first six months of the current contracts.

W-2 agencies are expected to terminate the W-2 Contract under the 120-day contract termination clause if the magnitude of the benefit funding shortfall is not addressed at the State level.

DWS management staff have indicated to the C & I Contract Issues subcommittee that the general framework for contingency fund access utilized in the last contract should be a primary consideration. The subcommittee has followed this guidance in the basic

approach recommended. It incorporates criteria related to caseload increases driven by significant economic downturns or other issues beyond the control of the agencies, and the prior utilization of available contract funds and Community Reinvestment resources to meet benefit spending needs.

The subcommittee considered additional aspects in its recommendations. These include:

- Addressing the need to take remedial action earlier in the contract implementation cycle. Significant benefit shortfalls are clearly evident only six months into the current contract implementation. If current W-2 providers do not receive relief and should decide to exercise the 120-day contract termination clause, the State will need time to obtain other vendors or to assume service provision itself for those contracts.
- Defining an explicit decision process for consideration of contingency funding requests. Timeframes for processing such requests are made to assure that legitimate requests are answered positively or negatively in a timely fashion, as opposed to an absence of action that would cause major program disruption due to uncertainty.
- Recommending that local agencies and counties have direct access to 13.10 proceedings of the Joint Finance Committee to allow for clear communication and justification of the funding needs to the responsible elected officials.

A draft Contract Addendum addressing the Contingency Fund access criteria is attached for the DWD's review.

#### **Alternatives:**

##### ***1. Do nothing.***

DWD could opt to take no action to resolve anticipated shortfalls in W-2 benefits spending. The risk of meeting such deficits would fall to the W-2 agencies under the current contract provisions. Additional funding for county W-2 agencies would generally require mid-term budget adjustments with the likelihood of local property tax increases. Such discussion would be a high-profile issue in the affected communities. Private W-2 agencies would need to consider the magnitude of the financial impact on their continuing operation. Some agencies have informally indicated that the size of the financial shortfall could quickly jeopardize their existence.

It is anticipated that a failure to take remedial action will result in contract terminations by counties and/or private agencies. It may be difficult for DWD to find alternate replacement vendors willing to accept the same level of risk. There may be anticipated closure costs for current W-2 agencies, and subsequent start-up costs for new W-2 agencies. There would be disruption in services to W-2 participants through any

transition of W-2 agencies. The State would be ultimately responsible for the costs of any “high” caseloads that would be transitioned to a successor W-2 agency.

***2. Utilize same criteria as in last contract.***

DWD could adopt the same criteria as had been promulgated during the last contract. The W-2 agencies would be required to demonstrate that a major negative economic event had occurred, that all available funding in the contracts and in Community Reinvestment allocations had already been utilized. DWD would forward such request and articulate the justifications for internal processing by the Executive branch and then potential action by the Legislative Joint Committee on Finance.

A primary issue is the timing of any remedial action. If the W-2 agencies need to demonstrate actual spending (rather than projected spending) deficits, those entities will already have experienced the total consequences of such fiscal risk. It is unlikely per anecdotal feedback that some of the affected W-2 agencies would incur significant financial liabilities without pursuing other options including initiation of contract termination.

Some W-2 entities requested relief from the contingency fund in the last contract. They found their requests were not granted because of the delay needed to document actual incurred expenses, an unclear process on representing the justifications to the Legislature, and the subsequent abolition of the \$150M contingency fund due to unspecified budgeting procedure problems.

There is concern among subcommittee members that a failure to install appropriate access procedures for this funding at this time could be problematic due to the current challenges in the Legislature regarding budget issues.

***3. Adopt the recommended procedures from the C&I Contract Issues subcommittee.***

The subcommittee has recommended a process incorporating the key concerns of DWD management relating to the demonstration that all possible offsetting actions have been taken by W-2 agencies prior to requested relief for benefits shortfalls from the contingency fund. The contingency fund would be the source of last resort.

The subcommittee has recognized the onset of significant shortfalls in benefit allocations at this early stage in the contract’s implementation is indicative of a significant problem, with the major driving causes being external economic conditions and known underbudgeting of some W-2 agencies at the time of contract award. The subcommittee proposes a process that provides for a projection of expected benefit spending. It would require a demonstration that all operational spending is prudent and sufficient to maintain adequate services according to the W-2 agency’s approved W-2 Plan. It would require DWD to review the requests in a timely fashion to allow consideration by the Joint Committee on Finance before crisis decision-making is needed on continuing program

operations. It would allow direct access to W-2 agencies to make their justification as appropriate to the 13.10 process of the JCF.

The process as recommended would provide for meaningful financial relief to address the current economic downturn and allow the W-2 program to continue without major disruption to clients, W-2 agencies, and DWD.

**Comments/Positions by External Partners:**

The subcommittee recommendations are anticipated to have the support of W-2 agencies as represented on the C&I Committee. It is expected that the Wisconsin Counties Association and other similar organizations representing local interests will be supportive. It is anticipated that advocates for human services programs will be supportive of actions to assure payment of continuing benefits to W-2 participants and the avoidance of major disruptions associated with contract W-2 agency changes.

**Comments by Technical Reviewers:**

N/A

**Recommendation to Secretary:**

Adopt the recommended policy from the C&I subcommittee for immediate implementation.